Phelps v. *Mayor, etc., of City of New York*, 112 N. Y. 216. *Contra, City of Newport* v. *Ringo's Ex'x*, 87 Ky. 635. See 11 HARV. L. REV. 475; 21 *ibid.* 225. So under the strict view, the principal case seems a proper subject for equitable relief. Furthermore, a substantial minority of American cases have adopted a looser view, allowing an injunction against the collection of any illegal tax. *Albany Bottling Co.* v. *Watson*, 103 Ga. 503, 508. The reason, perhaps, is that the taxation officials are exercising a position of trust. See COOLEY, TAXATION, 3 ed., 1419. Former cases in the jurisdiction of the principal case incline toward this minority view. See *Lewiston Water & Power Co.* v. *County of Asotin*, 24 Wash. 371. Moreover, by the better view the plaintiff is not estopped to attack the validity of the assessment. *City of Charlestown* v. *County Comm'rs of Middlesex*, 109 Mass. 270. *Contra, Inland Lumber & Timber Co.* v. *Thompson*, 11 Idaho 508, 515. The principal case seems hard to defend upon any theory.

INSURANCE — CONSTRUCTION AND OPERATION OF CONDITIONS — PRO RATA CLAUSE: OPERATION IN POLICIES NOT COEXTENSIVE. — A policy of insurance on cotton in a warehouse stipulated that the defendant should not be liable for a greater proportion of the loss than the amount for which the defendant insured the said cotton bore to the whole insurance thereon. A second policy covered cotton both inside and outside the warehouse. A fire destroyed all the cotton inside and part of the cotton outside the warehouse. *Held*, that the plaintiff can recover on the first policy only that proportion of the loss which the face value of the first policy bears to the total face value of both policies after subtracting the value of the cotton which was destroyed outside the warehouse. *Liverpool & London & Globe Ins. Co.* v. *Delta County Farmers' Ass'n*, 121 S. W. 599 (Tex. Ct. Civ. App.).

The whole insurance on the cotton in the warehouse is the face value of the policy covering it alone plus the amount for which it may be said to be insured by reason of the second policy. If each policy covered the same property only, this latter amount would be the face value of the second policy. *Farmers Feed Co. of N. J.* v. *Scottish, etc., Ins. Co. of Edinburgh*, 173 N. Y. 241. The same rule has been applied when the second policy covers additional property. *Page* v. *Sun Ins. Co.*, 74 Fed. 203. But such a rule would involve the anomalous conception that the blanket policy over-insured the cotton in the warehouse, though it under-insured the aggregate property covered by it. See *Ogden* v. *East River Ins. Co.*, 50 N. Y. 388, 391. It is submitted that under these circumstances the blanket policy insures the cotton in the warehouse not exceeding its total value. Some courts, indeed, hold that the blanket policy insures it only for that proportion of its value which the face of the blanket policy bears to the value of all the cotton covered. *Ogden* v. *East River Ins. Co.*, *supra;* 2 PHILLIPS, INSURANCE, § 1263 *a*. In deciding that the cotton inside the warehouse is insured by the second policy for the face value of the policy less the amount of the loss on the cotton outside, the principal case seems indefensible in theory. But see *Meigs* v. *London Assurance Co.*, 126 Fed. 781. In practice, if enough outside property were destroyed, this rule might prevent the defendant from pro-rating at all.

INSURANCE — RIGHTS OF INSURER — RELEASE OF WRONGDOER BY INSURED. — An insurance company paid the insurance on a building destroyed by fire caused by the defendant's locomotive. With knowledge of this payment, the defendant received from the owner a release from all liability. Subsequently, an action for the benefit of the insurance company was brought in the name of the owner. *Held*, that the release is no bar to the action. *Cushman & Rankin Co.* v. *Boston & Maine R. R.*, 73 Atl. 1073 (Vt.).

An insurance contract is a contract of indemnity. *Castellain* v. *Preston*, 11 Q. B. D. 380. And because of its liability to indemnify, an insurance company, immediately after the destruction of insured property, has a beneficial right against a wrongdoer who caused the loss. *Hart* v. *Western Railroad Corporation*, 13 Met.